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AN ACT

RELATING TO CRIMINAL SENTENCING; INCREASING THE AMOUNT PAID BY OFFENDERS FOR SUPERVISED PROBATION AND PAROLE SERVICES; REQUIRING OFFENDERS WHO PARTICIPATE IN A COMMUNITY CORRECTIONS PROGRAM TO MAKE A CO-PAYMENT; AMENDING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 31-20-6 NMSA 1978 (being Laws 1963, Chapter 303, Section 29-18, as amended) is amended to read:

"31-20-6. CONDITIONS OF ORDER DEFERRING OR SUSPENDING SENTENCE.--The magistrate, metropolitan or district court shall attach to its order deferring or suspending sentence reasonable conditions as it may deem necessary to ensure that the defendant will observe the laws of the United States and the various states and the ordinances of any municipality. The defendant upon conviction shall be required to reimburse a law enforcement agency or local crime stopper program for the amount of any reward paid by the agency or program for information leading to his arrest, prosecution or conviction, but in no event shall reimbursement to the crime stopper program preempt restitution to victims pursuant to the provisions of Section 31-17-1 NMSA 1978. The defendant upon conviction shall be required to pay the actual costs of his supervised probation service to the adult probation and

1 parole division of the corrections department or appropriate
2 responsible agency for deposit to the corrections department
3 intensive supervision fund not exceeding one thousand eight
4 hundred dollars (\$1,800) annually to be paid in monthly
5 installments of not less than twenty-five dollars (\$25.00)
6 and not more than one hundred fifty dollars (\$150), as set by
7 the appropriate district supervisor of the adult probation
8 and parole division, based upon the financial circumstances
9 of the defendant. The defendant's payment of the supervised
10 probation costs shall not be waived unless the court holds an
11 evidentiary hearing and finds that the defendant is unable to
12 pay the costs. If the court waives the defendant's payment
13 of the supervised probation costs and the defendant's
14 financial circumstances subsequently change so that the
15 defendant is able to pay the costs, the appropriate district
16 supervisor of the adult probation and parole division shall
17 advise the court and the court shall hold an evidentiary
18 hearing to determine whether the waiver should be rescinded.
19 The court may also require the defendant to:

20 A. provide for the support of persons for whose
21 support he is legally responsible;

22 B. undergo available medical or psychiatric
23 treatment and enter and remain in a specified institution
24 when required for that purpose;

25 C. be placed on probation under the supervision,

1 guidance or direction of the adult probation and parole
2 division for a term not to exceed five years;

3 D. serve a period of time in volunteer labor to be
4 known as "community service". The type of labor and period
5 of service shall be at the sole discretion of the court;
6 provided that a person receiving community service shall be
7 immune from any civil liability other than gross negligence
8 arising out of the community service, and a person who
9 performs community service pursuant to court order or a
10 criminal diversion program shall not be entitled to wages,
11 shall not be considered an employee and shall not be entitled
12 to workers' compensation, unemployment benefits or any other
13 benefits otherwise provided by law. As used in this
14 subsection, "community service" means labor that benefits the
15 public at large or a public, charitable or educational entity
16 or institution;

17 E. make a contribution of not less than ten
18 dollars (\$10.00) and not more than one hundred dollars
19 (\$100), to be paid in monthly installments of not less than
20 five dollars (\$5.00), to a local crime stopper program or a
21 local drug abuse resistance education program that operates
22 in the territorial jurisdiction of the court; and

23 F. satisfy any other conditions reasonably related
24 to his rehabilitation."

1 Chapter 28, Section 1, as amended) is amended to read:

2 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

3 A. An inmate of an institution who was sentenced
4 to life imprisonment as the result of the commission of a
5 capital felony, who was convicted of three violent felonies
6 and sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA
7 1978 or who was convicted of two violent sexual offenses and
8 sentenced pursuant to Subsection A of Section 31-18-25 NMSA
9 1978 and Section 31-18-26 NMSA 1978 becomes eligible for a
10 parole hearing after he has served thirty years of his
11 sentence. Before ordering the parole of an inmate sentenced
12 to life imprisonment, the board shall:

13 (1) interview the inmate at the institution
14 where he is committed;

15 (2) consider all pertinent information
16 concerning the inmate, including:

17 (a) the circumstances of the offense;

18 (b) mitigating and aggravating
19 circumstances;

20 (c) whether a deadly weapon was used in
21 the commission of the offense;

22 (d) whether the inmate is a habitual
23 offender;

24 (e) the reports filed under Section
25 31-21-9 NMSA 1978; and

1 (f) the reports of such physical and
2 mental examinations as have been made while in an
3 institution;

4 (3) make a finding that a parole is in the
5 best interest of society and the inmate; and

6 (4) make a finding that the inmate is able
7 and willing to fulfill the obligations of a law-abiding
8 citizen.

9 If parole is denied, the inmate sentenced to life
10 imprisonment shall again become entitled to a parole hearing
11 at two-year intervals. The board may, on its own motion,
12 reopen any case in which a hearing has already been granted
13 and parole denied.

14 B. Unless the board finds that it is in the best
15 interest of society and the parolee to reduce the period of
16 parole, a person who was convicted of a capital felony shall
17 be required to undergo a minimum period of parole of five
18 years. During the period of parole, the person shall be
19 under the guidance and supervision of the board.

20 C. Except for sex offenders as provided in Section
21 31-21-10.1 NMSA 1978, an inmate who was convicted of a first,
22 second or third degree felony and who has served the sentence
23 of imprisonment imposed by the court in an institution
24 designated by the corrections department shall be required to
25 undergo a two-year period of parole. An inmate who was

1 convicted of a fourth degree felony and who has served the
2 sentence of imprisonment imposed by the court in an
3 institution designated by the corrections department shall be
4 required to undergo a one-year period of parole. During the
5 period of parole, the person shall be under the guidance and
6 supervision of the board.

7 D. Every person while on parole shall remain in
8 the legal custody of the institution from which he was
9 released, but shall be subject to the orders of the board.
10 The board shall furnish to each inmate as a prerequisite to
11 his release under its supervision a written statement of the
12 conditions of parole that shall be accepted and agreed to by
13 the inmate as evidenced by his signature affixed to a
14 duplicate copy to be retained in the files of the board. The
15 board shall also require as a prerequisite to release the
16 submission and approval of a parole plan. If an inmate
17 refuses to affix his signature to the written statement of
18 the conditions of his parole or does not have an approved
19 parole plan, he shall not be released and shall remain in the
20 custody of the institution in which he has served his
21 sentence, excepting parole, until such time as the period of
22 parole he was required to serve, less meritorious deductions,
23 if any, expires, at which time he shall be released from that
24 institution without parole, or until such time that he
25 evidences his acceptance and agreement to the conditions of

1 parole as required or receives approval for his parole plan
2 or both. Time served from the date that an inmate refuses to
3 accept and agree to the conditions of parole or fails to
4 receive approval for his parole plan shall reduce the period,
5 if any, to be served under parole at a later date. If the
6 district court has ordered that the inmate make restitution
7 to a victim as provided in Section 31-17-1 NMSA 1978, the
8 board shall include restitution as a condition of parole.
9 The board shall also personally apprise the inmate of the
10 conditions of parole and his duties relating thereto.

11 E. When a person on parole has performed the
12 obligations of his release for the period of parole provided
13 in this section, the board shall make a final order of
14 discharge and issue him a certificate of discharge.

15 F. Pursuant to the provisions of Section 31-18-15
16 NMSA 1978, the board shall require the inmate as a condition
17 of parole:

18 (1) to pay the actual costs of his parole
19 services to the adult probation and parole division of the
20 corrections department for deposit to the corrections
21 department intensive supervision fund not exceeding one
22 thousand eight hundred dollars (\$1,800) annually to be paid
23 in monthly installments of not less than twenty-five dollars
24 (\$25.00) and not more than one hundred fifty dollars (\$150),
25 as set by the appropriate district supervisor of the adult

1 probation and parole division, based upon the financial
2 circumstances of the defendant. The defendant's payment of
3 the supervised parole costs shall not be waived unless the
4 board holds an evidentiary hearing and finds that the
5 defendant is unable to pay the costs. If the board waives
6 the defendant's payment of the supervised parole costs and
7 the defendant's financial circumstances subsequently change
8 so that the defendant is able to pay the costs, the
9 appropriate district supervisor of the adult probation and
10 parole division shall advise the board and the board shall
11 hold an evidentiary hearing to determine whether the waiver
12 should be rescinded; and

13 (2) to reimburse a law enforcement agency or
14 local crime stopper program for the amount of any reward paid
15 by the agency or program for information leading to his
16 arrest, prosecution or conviction.

17 G. The provisions of this section shall apply to
18 all inmates except geriatric, permanently incapacitated and
19 terminally ill inmates eligible for the medical and geriatric
20 parole program as provided by the Parole Board Act."

21 Section 3. Section 33-9-3 NMSA 1978 (being Laws 1983,
22 Chapter 202, Section 3, as amended) is amended to read:

23 "33-9-3. COMMUNITY CORRECTIONS GRANT FUND--ESTABLISHED--
24 CO-PAYMENTS.--

25 A. There is created in the state treasury a

1 special fund to be known as the "community corrections grant
2 fund". All money appropriated to the fund or accruing to it
3 as a result of gift, deposit, investments or other sources
4 shall not be transferred to another fund or encumbered or
5 disbursed in any manner except as provided in the Adult
6 Community Corrections Act. The fund shall be for the purpose
7 of providing programs and services for the diversion of
8 criminal offenders to community-based settings.

9 B. The department shall require criminal offenders
10 who participate in a program and who receive services to make
11 a co-payment to offset the cost of the services. The amount
12 of the co-payment shall be based upon the offender's ability
13 to pay. The department shall collect the co-payments and on
14 a monthly basis deliver them to the state treasurer for
15 deposit in the community corrections grant fund."

16 Section 4. APPLICABILITY.--The provisions of this act
17 apply to persons convicted of a criminal offense on or after
18 July 1, 2004.

19 Section 5. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2004. _____

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